THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Sales Tax Revision No. 122 of 2001
Old S.T. Revision No. 946 of 1991

The Kisan Sahkari Chini Mills Ltd.
Nadehi, Nainital. … Revisionist.

Versus

Sales Tax Commissioner U.P. …Opposite Party.

Sri C.K. Sharma, learned counsel for the revisionist.
Sri Pitambar Maulekhi, Addl. Advocate General, assisted by Sri K.C. Tiwari learned counsel for the opposite party-State.

Dated May 18, 2006

PC:
(Hon'ble B.S. Verma, J.)

Heard Sri C.K.Sharma, learned counsel for the revisionist as well as Sri Pitambar Maulekhi, learned Additional Advocate General assisted by Sri K.C. Tiwari for the respondent.

This revision under Section 11(1) of the U.P. Sales Tax Act 1948 is directed against the judgment and order dated 25-5-1991 passed by the Sales Tax Tribunal as well as order dated 24-2-1990 passed by the first appellate authority and the order dated 17.3.1989 passed by the assessing authority. The learned Tribunal has partly allowed the appeal and the interest imposed on the gunny bags was exempted. However, the assessment of sales tax imposed on the gunny bag was maintained.

Initially this revision was filed before the Allahabad High Court as back in the year 1991 and was received by transfer under Section 35 of the U.P. Reorganisation Act, 2000.

The only question of law, raised in the revision, is *whether the sales tax can be levied on the packing material used for packing sugar, which is exempted from sales tax under Section 4 of the Sales Tax Act?*

In the course of arguments, the learned counsel for the revisionist made a reference to decision dated 19-7-2005 of this Court in the case of ***The Commissioner of Sales Tax, U.P. Lucknow Vs. M/s Kisan Sahkari Chini Mill Ltd. reported in 2005(2) U.D., 534,*** whereby the revision preferred by the opposite party was dismissed in-limine. It has been vehemently submitted that the controversy involved in the above case was similar to that of the present revision. The learned counsel submitted that the present case is squarely covered by the decision of this Court.

I have perused the entire material on record including the judgment of this Court reported in ***2005 (2) U.D., 534.*** In that case, this Court has considered the point whether the price of gunny bags were liable to be taxed by adding the same in the turnover of the dealer with the price of sugar. In the reported case, the learned Tribunal had decided the matter in favour of the Sugar Mill concerned, therefore, the Commissioner of Sales Tax had preferred the appeal and the substantial question of law was answered in the negative against the revisionist. The same controversy has arisen in the case at hand. The learned counsel for the opposite party has fairly conceded to this fact.

The record reveals that the assessment in the present case pertains to the year 1981-82 and 1982-83. It is not disputed that during the relevant years sugar was exempted from tax liability under Section 4 of the U.P. Sales Tax Act, 1948. It is admitted case that the sugar is always sold in gunny bags as the same is used as packing material. The assessee/revisionist is the manufacturer of sugar and the revisionist was not supposed to keep it in losse without any packing. In my view, merely on the basis of the fact that sugar was sold in gunny bags by the manufacturer, it cannot be said that the assessee sold the gunny bags by realizing its price. From the record, it is not established that there was any direct agreement between the assessee and the purchaser of sugar for sale of gunny bags for any consideration. It has not been shown from the side of

the opposite party that price was paid towards cost/sale of gunny bags, it cannot be presumed that there was sale of gunny bags on the part of the manufacturer, therefore, the matter is not covered by the definition of sale in view of Section 2(h) of the U.P.Sales Tax Act, 1948. The substantial question of law is accordingly answered in negative in favour of the revisionist. I fully agree with the view taken by this Court in the aforesaid reported case.

In the result, the revision succeeds and is allowed. The impugned order dated 25-05-1991 passed by the learned Tribunal stands modified. It is held that the packing material of sugar, i.e. gunny bag is not covered for assessment of sales tax.

Sales Tax, if any, already paid towards gunny bag shall be refunded to the revisionist.

(B.S. Verma J.)

RCP